

SENATE BILL REPORT

ESHB 2212

As Reported By Senate Committee On:
Government Operations & Elections, March 26, 2007

Title: An act relating to addressing the application of the growth management act to certain agricultural activities occurring on agricultural lands.

Brief Description: Expressing progress in balancing the productive use of agricultural lands with their preservation.

Sponsors: House Committee on Local Government (originally sponsored by Representatives Blake, B. Sullivan and Newhouse).

Brief History: Passed House: 3/13/07, 79-17.

Committee Activity: Government Operations & Elections: 3/22/07, 3/26/07 [DPA, DNP].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: Do pass as amended.

Signed by Senators Fairley, Chair; Oemig, Vice Chair; Kline and Pridemore.

Minority Report: Do not pass.

Signed by Senators Roach, Ranking Minority Member and Swecker.

Staff: Mac Nicholson (786-7445)

Background: The Growth Management Act (GMA) is the comprehensive land use planning framework for county and city governments in Washington. The GMA requires all jurisdictions planning under it to satisfy specific designation and protection mandates, including the designation and protection of critical areas. Critical areas include wetlands, aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas. Local governments protect critical areas through the adoption of critical areas ordinances (CAOs).

The William D. Ruckelshaus Center (Center) is housed jointly at WSU Extension at Washington State University, and at the Daniel J. Evans School of Public Affairs at the University of Washington. The Center acts as a neutral resource for collaborative problem solving in the region. The Center's activities are guided by an advisory board whose members come from locations throughout the state and represent a variety of backgrounds including business, industry, law, tribes, education, health, agriculture, labor, environmental and community organizations, and government.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Summary of Engrossed Substitute Bill: Counties and cities must defer amending or adopting CAOs as they specifically apply to agricultural activities until July 1, 2009. CAOs enacted before January 1, 2007, and statutory obligations to protect critical areas not associated with agricultural activities are not affected by the legislation. Additionally, counties and cities may employ voluntary measures or programs to protect critical areas associated with agricultural activities.

Counties and cities that defer amending or adopting CAOs that specifically apply to agricultural activities must review and revise the CAOs to comply with the GMA by July 1, 2010.

Agricultural activities are defined as agricultural uses and practices currently existing or legally allowed. Numerous examples of permitted activities are specified in the legislation.

The legislation does not limit or otherwise modify the authority of counties and cities to comply with court or growth management hearings board orders; implement a settlement in compliance with the requirements of the GMA; or attempt to settle issues raised in litigation challenging CAOs and implementing regulations as they specifically apply to agricultural activities.

The Ruckelshaus Center is directed to conduct a two-phase examination of the conflicts between agricultural activities and CAOs, subject to the availability of funding appropriated for the study. The Center is required to work with willing participants including agricultural, environmental, tribal, and local government interests as well as legislators.

In the first phase of the examination, the Center must conduct fact-finding and stakeholder discussions to identify concerns, desired outcomes, opportunities, and barriers. The fact-finding must identify existing regulatory, management, and scientific information related to agricultural activities and critical areas. The Center must issue a report on the first phase to the Governor and the Legislature by December 1, 2007.

In the second phase, the Center must facilitate discussions between the stakeholders to identify policy and financial options or opportunities to address the issues identified in the first phase. The Center must examine innovative solutions including outcome-based approaches that incorporate voluntary programs or approaches. The Center must work to achieve consensus and develop a coalition of diverse stakeholders to support agreed upon changes to protecting critical areas during the 2009 Legislative Session.

The Center must issue a final report of findings and legislative recommendations to the Governor and the Legislature by September 1, 2008.

If specific funding for the examination is not provided by June 30, 2007, in the omnibus appropriations act, the legislation is null and void.

The legislation applies retroactively to any CAOs as they specifically apply to agricultural activities amended or adopted by a county or city on or after January 1, 2007.

EFFECT OF CHANGES MADE BY RECOMMENDED AMENDMENT(S) AS PASSED COMMITTEE (Government Operations & Elections): The period during which counties and cities must defer amending or adopting CAOs is changed to start on May 1,

2007. The amendment eliminates the provision of the bill stating that nothing in the act limits or otherwise modifies the authority of a county or city to comply with an order from a court or hearings board, implement a settlement, or attempt to settle issues raised in litigation. Language is added to the Ruckelshaus Center examination process requiring stakeholders to examine ways to modify existing law to ensure that regulatory constraints on agricultural activities are used as a last resort if desired outcomes are not achieved through voluntary programs or approaches.

Appropriation: None.

Fiscal Note: Requested on March 15, 2007.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony: PRO: Farmers need to be able to farm their land, but the threat of buffers takes away the ability of farmers to manage land, consequently farmers will get out of farming and subdivide their land. This bill calls for a time out so groups can find a common ground and a solution so people can keep farming. This is a critical bill and it is still in negotiation, but it should be moved along. Environmental groups that fought the I-933 initiative agreed to work on fundamental fairness issues that arose during the campaign. One of the big issues is the CAO/agriculture conflict. This issue requires a long, deliberative process outside the frenzy of the legislative session. New and innovative solutions need to be brought to the table and the discussion needs an impartial convener. Agricultural land in production is far better than pavement; however, agriculture shouldn't be excluded from regulatory requirements. Artificially high levels of nutrients associated with agricultural activities lead to algae blooms which deplete oxygen levels. Temperature increases in water are associated with agricultural activities. This bill provides a level playing field and gets everybody to the table. Environmental groups gave up two years of critical area protection in order to let the Ruckelshaus process work to build a consensus.

CON: This bill is a two year death threat to the Washington State agriculture community. The agriculture industry should not be forced into regulations that are not supported by true field tested science. What already exists in Skagit County adequately protects critical areas. Field tested science doesn't support buffers on agricultural land. Farmland must be preserved and not taken by special interest politically driven groups. The Ruckelshaus study is a waste of time and money. SB 5248 would save lands and salmon. Buffers put farmers out of business. HB 2212 is not the answer. Farmers want certainty, they do not want to go to the Ruckelshaus Center. Agricultural land should be a critical area.

OTHER: This bill demands that CAOs go into effect in 2009, but there is no duty to protect agriculture. Mandatory buffers are not the answer to water and habitat issues. Buffers create losses in revenues of farms. Buffers encourage farmers to subdivide, develop, and sell their land. The Ruckelshaus Center study is a good idea. Mandatory buffers prevent land from being used for farming. Whatever program that is put forth needs to be voluntary, not mandatory. Farmers are the best stewards of land and buffers would promote noxious weeds. Water in Skagit County exceeds standards and there has been no problem. Buffers will put most farms out of business. Buffers should be taken off the table. A bill should

continue moving through the process to deal with this very serious problem, and there is ongoing negotiation. The bill is not acceptable to the Farm Bureau as is. The bill protects 35 counties, but does not protect four counties because of the ongoing litigation provisions. Agriculture in every county is worthy of protection. There needs to be something that says the problem facing farmers now won't be facing farmers in two years. There is concern that doing something shows that the problem is fixed, even when it hasn't been fixed. There needs to be more definition of the process.

Persons Testifying: PRO: Representative Blake, prime sponsor; Kaleen Cottingham, Futurewise; Cliff Traisman, Washington Environmental Council, Washington Conservation Voters.

CON: Randy Good, Skagit County Cattlemen; John Roozen, citizen.

OTHER: Terry Willis, citizen; Larry Jensen, Skagit County Farm Bureau; Janet McRae, Skagit County Cattlemen; Dan Wood, Farm Bureau.